

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Petition for Interim Waiver of Section 36.2(A)(3))

Filed By:)

the National Exchange Carrier Association, Inc.)

CC Docket No. 80-286

DA 98-909

MCI REPLY COMMENTS

MCI Telecommunications Corporation (MCI), pursuant to the Commission's May 14, 1998 Public Notice,¹ hereby submits its reply to comments on the petition for interim waiver filed by the National Exchange Carrier Association, Inc. (NECA) on May 8, 1998.

I. The Commission Cannot Change the Separations Treatment of Internet Traffic on Local Business Lines in a Waiver Proceeding

NECA's petition for interim waiver of Section 36.2(a)(3) of the Commission's rules is supported by a large number of NECA traffic sensitive pool members. In their view, however, NECA's requested freeze of separations allocators would be only an interim "solution" to the "distortion" that they allege is caused by classifying Internet

¹Public Notice, DA 98-796, April 24, 1998.

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traffic as intrastate for separations purposes. Several NECA traffic sensitive pool members, together with USTA and SBC, urge the Commission to take the additional step of “determining” that Internet traffic on local business lines is interstate and should be classified as interstate for separations purposes.²

The Commission cannot simply “determine” that Internet traffic on local business lines is to be classified as interstate for separations purposes, as the ILECs urge. Such a declaration would be contrary to the Commission’s previous statement that enhanced service provider traffic on local business lines should be classified as intrastate for separations purposes.³ As several NECA pool members discuss in their comments, NECA itself recognizes that current separations procedures require Internet traffic on local business lines to be classified as intrastate for separations purposes.⁴ Until very recently, all ILECs recognized that Internet traffic should be treated as intrastate for separations purposes.⁵

ALTS correctly points out that any change in the separations treatment of Internet traffic could have a significant impact on separations results and on “downstream” cost allocations.⁶ Given that the Commission has stated that Internet traffic should be treated

²SBC Comments at 3, 6-7.

³In the Matter of Amendment of Part 69 of the Commission’s Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Notice of Proposed Rulemaking, 4 FCC Rcd 3983, 3987 (1989).

⁴Western Alliance Comments at 4-5.

⁵See ALTS Comments at 2.

⁶Id. at 3.

as intrastate for separations purposes, and that this separations treatment has been the ILECs' consistent practice, the ILECs' proposals to change the separations treatment of Internet traffic should be considered, if at all, in a full notice and comment rulemaking proceeding. These proposals would also have to be referred to the Joint Board.

There is, in any event, no basis for the Commission to change the separations treatment of Internet traffic on local business lines. First, as ALTS points out, it is by no means clear that Internet traffic on local business lines is jurisdictionally interstate, as the ILECs contend.⁷ For example, the same local call to an ISP may involve Internet communications with local computers as well as computers in other states.

Second, and more importantly, even if it is true that Internet traffic on local business lines is jurisdictionally interstate, the current practice of treating such traffic as intrastate for separations purposes is entirely consistent with the system of state and federal regulation established in the Communications Act, which provides a central role for the separations process in determining the scope of federal and state ratemaking authority.⁸ Because current procedures treat Internet traffic on local business lines as intrastate, Section 36.125 and other separations rules assign the traffic sensitive costs incurred in the provision of local business lines to ISPs to the states, who then take these costs into account when developing the local business line rates that are paid by ISPs. Under the ILECs' suggested approach, by contrast, cost allocations would be

⁷ALTS Comments at 11-18.

⁸In the Matter of MTS and WATS Market Structure; Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Decision and Order, 4 FCC Rcd 5660, 5661 (1989).

disconnected from the ratemaking process: the states would continue to develop local business line rates, but the traffic sensitive costs of providing local business line service to ISPs would be assigned to the interstate jurisdiction. These costs would then have to be recovered from purchasers of a completely distinct service -- interstate access.

Given that the Commission has only recently concluded, in the access reform proceeding, that ISPs may continue to purchase local business lines from intrastate tariffs,⁹ there is no reason to consider a change in the separations procedures that apply to Internet traffic on local business lines. Indeed, the Commission should take the opportunity presented by NECA's waiver petition to make clear that Internet traffic on local business lines is to be treated as intrastate for separations purposes. A Commission statement reiterating that Internet traffic should be treated as intrastate would eliminate any "variances" in the separations treatment of Internet traffic that may be occurring,¹⁰ and would ensure that separations results and Part 69 cost allocations are not distorted by incorrect application of the separations rules.

II. NECA's Request Does Not Meet the Standard for Grant of a Waiver

The NECA pool members filing comments on NECA's petition contend that a freeze of separations factors is warranted because the growth in Internet traffic on local business lines is causing cost shifts to the intrastate jurisdiction. They assert that these

⁹In the Matter of Access Charge Reform, First Report and Order, CC Docket No. 96-262, rel. May 16, 1997, at ¶344 (Access Reform Order).

¹⁰See NECA Petition at 2-3.

cost shifts are “significant,”¹¹ and are causing “unwarranted”¹² impacts on interstate settlements.

A cost shift, by itself, does not demonstrate “special circumstances” that warrant waiver of Section 36.2(a)(3) of the Commission’s rules. First, any shift in costs would be fully consistent with the “relative use” principle that underlies the separations process -- as the relative level of traffic classified as intrastate increases, additional costs should be assigned to the intrastate jurisdiction. Second, any increase in costs assigned to the intrastate jurisdiction will be offset to a significant extent by an increase in intrastate revenues resulting from the sale of second lines and from the provision of additional business lines to ISPs.

While many NECA pool members imply that they are experiencing a cost shift that is so significant that it is having a substantial impact on their financial results, only two commenters have made any attempt to quantify the financial impact of Internet traffic.¹³ There is no evidence that these commenters’ experience is representative of NECA pool members as a whole; NECA admits that the impact of Internet traffic would vary significantly among members of the traffic sensitive pool.¹⁴ There is also no evidence that the cost shifts reported by these commenters are due solely to the growth in Internet traffic, or that these cost shifts are significant by historical standards.

¹¹Frederick & Warinner Comments at 2.

¹²TDS Comments at 6.

¹³Frederick & Warinner Comments at 2; ICORE Comments at 3.

¹⁴NECA Petition at 6.

Because this meager record does not justify a waiver that would apply to all members of the NECA traffic sensitive pool, the Commission should deny NECA's request for a blanket waiver of Section 36.2(a)(3) applicable to all NECA traffic sensitive pool members. Individual NECA pool members that believe that the impact of Internet traffic on their operations constitutes "special circumstances" would still be able to file a petition for waiver of Section 36.2(a)(3) or other Commission rules.

III. Conclusion

For the reasons stated in these reply comments and in MCI's initial comments, MCI recommends that the Commission deny NECA's petition for interim waiver.

Respectfully submitted,
MCI TELECOMMUNICATIONS
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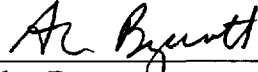


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June 18, 1998

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on June 18, 1998.



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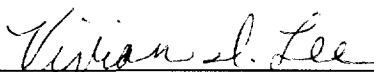
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